

(TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Florida, is amended by adding DTV channel 32 and removing DTV channel 38 at St. Petersburg.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9-21388 Filed 9-3-09; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09-1963; MB Docket No. 09-160; RM-11558]

Television Broadcasting Services; Traverse City, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Barrington Traverse City License, LLC ("Barrington"), the licensee of station WPBN-TV, channel 7, Traverse City, Michigan. Barrington requests the substitution of digital channel 47 for digital channel 7 at Traverse City.

DATES: Comments must be filed on or before September 21, 2009, and reply comments on or before September 29, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Marnie K. Sarver, Esq., Wiley Rein, LLP, 1776 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT:

David Brown, *david.brown@fcc.gov*, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09-160, adopted August 27, 2009, and released August 28, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Michigan, is amended by adding DTV channel 47 and removing DTV channel 7 at Traverse City.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9-21390 Filed 9-3-09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907281181-91191-01]

RIN 0648-AX93

Fisheries of the Northeastern United States; Modification to the Gulf of Maine/Georges Bank Herring Midwater Trawl Gear Authorization Letter

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes modifications to the requirements for

midwater trawl vessels issued All Areas and/or Areas 2 and 3 Atlantic herring limited access permits fishing in Closed Area I (CA I). In order to fish in CA I, midwater trawl vessels with these permits would be required to carry a NMFS-approved observer and to bring the entire catch aboard the vessel, unless specific conditions are met, so that it is available to the observer for sampling. These proposed changes to the Gulf of Maine/Georges Bank (GOM/GB) Herring Midwater Trawl Gear Letter of Authorization (LOA) would be effective indefinitely, until changed by a subsequent action.

DATES: Written comments must be received no later than 5 p.m. local time on September 21, 2009.

ADDRESSES: You may submit comments, identified by 0648-AX93, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-rulemaking portal: <http://www.regulations.gov>.
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2276. Mark the outside of the envelope: "Modification to GOM/GB Midwater Trawl LOA."
- Fax: (978) 281-9135.

Instructions: All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter "N/A" in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281-9341, fax (978) 281-9135.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Northeast Regional Office and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) voted at its April 8, 2009, Council meeting to request that the NMFS Northeast Regional Administrator modify the GOM/GB Herring Midwater Trawl Gear LOA to require midwater trawl vessels fishing in CA I to have 100-percent observer coverage; be prohibited from slipping codends (the practice of opening the codend of the net and releasing the catch before all of it is brought on board); and be required to pump aboard the vessel all fish caught, to allow sampling by the observer.

The final rule implementing Framework Adjustment 18 (FW 18) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) (63 FR 7727, February 17, 1998) authorized midwater trawl vessels to fish in the groundfish year-round closed areas with specific conditions regarding bycatch of regulated multispecies. The FW 18 implementing regulations (§ 648.81(a)(2)(iii)), grant the Regional Administrator the authority to place restrictions and conditions in the LOA if it is determined that the bycatch of regulated multispecies in the groundfish closed areas exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation. Recent analysis of at-sea observer data, presented by NMFS at the April 8, 2009, Council meeting, demonstrated that the bycatch of regulated multispecies in groundfish CA I exceeded 1 percent of herring caught on at least two individual fishing trips between May 2004 and October 2008. Based on this information, the intent of the Council's motion is to collect additional information on bycatch by the midwater trawl directed herring fishery in CA I to determine whether revisions should be made to the exemption allowing these vessels to fish in groundfish closed areas.

Therefore, based on the authority granted in the regulation cited above, in combination with section 402(a) of the Magnuson-Stevens Act, which allows NMFS to implement information collections or observer programs if additional information is necessary to monitor a fishery management plan, NMFS proposes to implement the Council's recommendation by adding language to the existing LOA to prohibit midwater trawl vessels with All Areas and/or Areas 2 and 3 limited access Atlantic herring permits from fishing in CA I without a NMFS-approved at-sea observer aboard. The LOA would also stipulate that such vessels, while

operating in CA I, would be prohibited, except under certain circumstances, from releasing fish from the net before all of the catch has been pumped aboard and made available to the observer for sampling.

Starting in 2005 with FW 40-B to the NE Multispecies FMP (70 FR 31323, June 1, 2005), vessels in the directed herring fishery (those permitted to land 500 mt of herring or more) have been required to notify NMFS at least 72 hr prior to departing on a herring trip into the GOM/GB Exemption Area, to facilitate observer deployment. In 2006, FW 43 to the NE Multispecies FMP (71 FR 46871, August 15, 2006) instituted a bycatch allowance of regulated groundfish for vessels in the directed herring fishery. Based on the precedent set in these previous Council actions, the measures proposed by this action would apply to vessels in the directed herring fishery, specifically those with All Areas and/or Areas 2 and 3 limited access Atlantic Herring permits.

Observer Provisions

This proposed rule would require vessels using midwater trawl gear in the directed herring fishery to indicate their intention to fish in CA I when scheduling an observer through the Northeast Fishery Observer Program. This notification is intended to allow NMFS to ensure an observer is deployed on all vessels that intend to fish in CA I with midwater trawl gear. To ensure 100-percent observer coverage, midwater trawl vessels would not be permitted to fish in CA I without an observer.

Slipped Codend Provisions

NMFS proposes that midwater trawl vessels in the directed herring fishery, that have indicated an intention to fish in CA I, and that have been assigned a NMFS-approved at-sea observer, would be prohibited, unless specific conditions are met, from releasing (i.e., slipping) fish from the codend of the net, transferring fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discarding fish at sea, unless the fish have first been brought aboard the vessel and made available for sampling and inspection by the observer. Even if such a vessel did not fish an entire trip inside of CA I, it would be required to comply with these requirements for the entire trip to ensure that maximum amount of information is obtained.

NMFS recognizes that there are certain conditions under which fish must be released from the codend without being sampled. Therefore, this provision is not intended to limit the

discretion of the captain to regulate the stability of the vessel in adverse sea conditions, and the operator would be permitted to dump fish if bringing them aboard the vessel could compromise the safety of the vessel or her crew. In addition, mechanical failure of the pump may preclude bringing some or all of a catch aboard the vessel. That part of the catch that could not be pumped aboard because of mechanical failure could be released. Mechanical or safety problems of sufficient magnitude to warrant slipping a codend would require termination of the fishing trip and the vessel's return to port. This requirement is designed to help ensure that safety or mechanical justifications for slipping a codend are not used as a false pretext to avoid sampling.

NMFS recognizes that species composition in the catch, specifically a high concentration of spiny dogfish, can cause the fish pump to clog, slowing the pump-out process and potentially damaging the rest of the catch. Therefore, NMFS proposes allowing fish to be released unsampled if spiny dogfish are determined to comprise more than 50 percent of the catch, by weight. Pumping operations would have to be started so that the observer could determine that the quantity of spiny dogfish in the catch is sufficient to make pumping the remainder of the catch nearly impossible. A vessel would not be required to end the trip following a slipped codend due to a high concentration of spiny dogfish.

If a codend is slipped, the vessel operator would be required to sign an affidavit to NOAA's Office of Law Enforcement (OLE) attesting to the specific reason for the release, and a good-faith estimate of both the total weight of fish caught and the weight of fish released. Completed and signed affidavits would be sent to OLE at the conclusion of the trip. Slipped codends for which an affidavit has been completed and signed, citing one of the exemptions mentioned above, would be presumed to be in accordance with the regulations unless a preponderance of the evidence demonstrates otherwise.

Representatives of the commercial midwater trawl industry have asserted that short duration tows, or "test tows," used to check the abundance of target and bycatch species in an area should not be required to be pumped aboard. Because the purpose of this proposed expansion of the information collection program is to increase the understanding of the bycatch of this fishery in CA I, it is necessary to collect information on bycatch in all tows made by midwater trawl vessels in CA I. However, the proposed regulations

would not require a vessel to pump out the catch from a test tow if the net is simply reset without releasing the catch. In this circumstance, the catch from the test tow would remain in the codend and would be available to the observer to sample when the subsequent tow is pumped out. In addition, fish that a vessel would normally discard because of regulatory, market, or other factors, could be discarded, but only after being brought on board and sampled by the observer.

Request for Comments

The public is invited to comment on any of the measures proposed in this proposed rule. NMFS is especially interested in receiving comments on proposed measures regarding the requirement for vessels to end a trip after a codend is slipped due to safety concerns or mechanical failure. Additionally, comment is specifically sought on whether or not 50 percent is the appropriate level of spiny dogfish bycatch at which to allow a codend to be released. Comment is also sought regarding how much of the catch should be pumped to determine the level of dogfish bycatch, in order to justify slipping the codend and releasing the remainder of the tow without being sampled by the observer.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Herring and NE Multispecies FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The NMFS Northeast Regional Administrator has determined that this proposed rule is a minor technical addition, correction, or change to a management plan and is therefore categorically excluded from the requirement to prepare an Environmental Impact Statement or equivalent document under the National Environmental Policy Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This amendment does not significantly affect the practices of any fishing operation. It increases the rate of at-sea fishery observer coverage to 100 percent

for midwater trawl vessels fishing in CA I. Sufficient observer sea-days have been allocated to this program to cover the expected fishing effort by midwater trawlers in CA I in the next fishing year. If the Northeast Fishery Observer Program is unable to provide an observer for a vessel that indicates an intention to fish in CA I, the vessel may still fish, but would be prohibited from fishing inside CA I on that trip. The rule also stipulates that, during trips when a vessel has indicated an intention to fish in CA I, the codend of the net may not be slipped and all fish must be pumped aboard the vessel, unless specific conditions are met. For example, exceptions would be made for a vessel if pumping out the net is not possible due to concerns for vessel safety, mechanical problems, or a high concentration of spiny dogfish. Currently, very few midwater trawl trips fish in CA I on an annual basis, and vessels that do not receive an observer are still able to fish in any other areas open to this gear. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains one new collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). The observer notification of a vessel's intention to fish in CA I will be added to the information collection for the Herring Vessel Observer Program Notification, which has been approved by OMB under control number 0648-0202. The public reporting burden for the Herring Vessel Observer Program Notification will not change, and is estimated to average 2 min per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The new collection-of-information requirement pertaining to the slipped codend exemption affidavit has been submitted to OMB for approval. The public reporting burden for completion of the slipped codend exemption affidavit is estimated to average 5 min per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and

clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the ADDRESSES above, and e-mail to *David.Rostker@omb.eop.gov*, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 31, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, add paragraphs (r)(2)(v), (r)(2)(vi), and (r)(2)(vii) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(r) * * *

(2) * * *

(v) Fish with midwater trawl gear in Closed Area I, as specified at § 648.81(a), without a NMFS approved observer onboard, if the vessel holds an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit.

(vi) Release fish from the codend of the net, transfer fish to another vessel

that is not carrying a NMFS-approved observer, or otherwise discard fish at sea before bringing the fish aboard and making it available to the observer for sampling, unless subject to one of the exemptions as defined at § 648.80(d)(7)(ii), if the vessel has expressed an intention to fish in Closed Area I, as detailed at § 648.80(d)(5) and is carrying an observer.

(vii) Fail to complete, sign, and submit an affidavit if fish are released pursuant to the exemptions detailed at § 648.80(d)(7)(ii).

* * * * *

3. In § 648.80, revise paragraph (d)(5) and add paragraph (d)(7) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(d) * * *

(5) To fish for herring under this exemption, vessels issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit must provide notice of the following information to NMFS at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment: Vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and whether the vessel intends to engage in fishing in Closed Area I, as defined in § 648.81(a), at any point in the trip; and

* * * * *

(7) *Fishing in Closed Area I.* (i) No vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may fish in, or possess or land fish from, Closed Area I with pelagic midwater trawl gear unless it has declared its intent to fish in Closed Area I as required by paragraph (d)(5) of this section, and is carrying a NMFS-approved observer.

(ii) No vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access

Herring Permit that has declared its intent to fish with pelagic midwater trawl gear in Closed Area I, in accordance with paragraph (d)(5) of this section, and is carrying a NMFS-approved observer, may release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer (e.g. an Atlantic herring at-sea processing vessel or an Atlantic herring carrier vessel), or otherwise discard fish at sea, unless the fish has first been brought aboard the vessel and made available for sampling and inspection by the observer, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) That mechanical failure of the fish pump precludes bringing the fish aboard the vessel for inspection; or,

(C) After pumping of fish onto the vessel has begun, the vessel operator determines that spiny dogfish comprise at least 50 percent, by weight, of the catch, and observer sampling demonstrates that spiny dogfish comprise at least 50 percent, by weight, of the sampled catch.

(iii) If fish are released prior to being brought aboard the vessel due to any of exceptions detailed in paragraphs (d)(7)(ii)(A) through (C) of this section, the vessel operator shall make all reasonable efforts to assist the observer in identifying the reason for the release; the total weight of fish caught, and the weight of fish released, and shall sign an affidavit attesting to this information. Further, if fish are discarded prior to being inspected by the observer, for either safety or mechanical reasons, as detailed in paragraphs (d)(7)(ii)(A) or (B) of this section, the vessel must end the trip and return to port without making additional tows.

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